



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 50

March 10, 2008

S. Con. Res. 70 – Concurrent Budget Resolution for Fiscal Year 2009

Calendar No. 612

Reported on March 6, 2008 as an original concurrent resolution by the Senate Budget Committee, by a vote of 12 to 10; no written report.

Noteworthy

As approved by the Senate Budget Committee, S. Con. Res. 70 sets total spending in fiscal year (FY) 2009 at \$3.037 trillion and total revenues at \$2.71 trillion.

- **Tax Increases:** S. Con. Res. 70 assumes \$1.2 trillion more in taxes over five years than the CBO baseline. Presumably, a significant portion of this revenue will come from allowing the 2001 and 2003 tax relief to expire.
- **Alternative Minimum Tax (AMT):** S. Con. Res. 70 assumes a one-year patch of the AMT, without offsetting the cost.
- **Budget Enforcement:** S. Con. Res. 70 contains no new budget points of order, creates a debt disclosure requirement in order for a budget resolution to be considered, and continues the current points of order that are designed to reduce the deficit through tax increases rather than spending restraint. The resolution modifies the existing long-term deficit point of order, and establishes a 60-vote threshold for legislation that would increase the deficit by any amount in the later years (previously the threshold was \$5 billion in a ten year period). The existing pay-as-you-go (PAYGO) rule is unchanged. Only a simple majority is needed to raise taxes.
- **Discretionary Spending:** S. Con. Res. 70 provides \$1.085 trillion (after cap adjustments) in discretionary budget authority for FY 2009, which is \$22 billion above the President's request. Of that amount, S. Con. Res. 70 provides for \$4 billion more in advance appropriations than the President's budget. Within this allocation, many domestic spending programs are increased. The budget fully funds the President's defense request, including \$70 billion for the continued wars in Iraq and Afghanistan and funds the President's request for emergency funding for Hurricane Katrina.

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- **Mandatory Spending:** S. Con. Res. 70 includes \$20 billion in spending for stimulus initiatives in FYs 2008 and 2009.
 - **Medicare Spending:** S. Con. Res. 70 includes \$420 billion for Medicare in FY 2009, an increase of \$30 billion (+7.7 percent) over 2008. The average annual increase in Medicare spending during the five-year budget window is 7.3 percent. S. Con. Res. 70 also includes \$1.3 billion in savings to Medicare in FY 2013.
 - **Reserve Funds:** S. Con. Res. 70 creates 37 deficit-neutral reserve funds. The Chairman of the Budget Committee may adjust committee allocations if legislation meets the requirements of the reserve fund and is deficit-neutral. These reserve funds allow for tax increases to offset spending increases.
 - **Reconciliation:** S. Con. Res. 70 does not include any reconciliation instructions.
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Highlights

Budget Enforcement

Enforcement of the budget resolution is based primarily upon 60-vote budget points of order and reconciliation procedures. The creation of these enforcement tools are not changes to law but are changes to Senate rules. S. Con. Res. 70 includes no new budget points of order but does create a new requirement that a budget resolution contain a debt disclosure section in order to be considered.

The resolution also extends and modifies certain existing points of order as follows:

Long-term Deficits (Section 201)

S. Con. Res. 70 modifies the current 60-vote point of order against long-term deficits. The point of order would now lie against any measure that increases the deficit by any amount over any of the four ten-year periods during FYs 2019-2058. The previous point of order allowed an increase of up to \$5 billion in each of the four ten-year periods. This rule requires increased spending to be offset with increased revenues.

Discretionary Spending Limits (Section 211)

As approved by the Senate Budget Committee, S. Con. Res. 70 continues an enforcement tool to set discretionary spending limits for FY 2008 and FY 2009. The discretionary spending limit is set at \$1.055 trillion in budget authority for FY 2008 and \$1.008 trillion for FY 2009. The FY 2009 amount is anticipated to adjust up to the ultimate level of \$1.085 trillion, which is \$18 billion above the President's request. These spending limits may be modified for matters relating to: continuing disability reviews and SSI redeterminations, IRS tax enforcement, health care fraud and abuse, unemployment insurance improper payments, healthcare research and

quality, reducing waste in defense contracting, and the continued wars in Iraq and Afghanistan. Emergency supplemental spending would be exempt from these limits.

Advance Appropriations (Section 212)

As approved by the Senate Budget Committee, S. Con. Res. 70 extends the current advance appropriations point of order. The point of order prohibits the consideration of advance appropriations, except for those provided for FYs 2010-2011 for specified accounts (including the Corporation for Public Broadcasting), which in total cannot exceed \$29.352 billion. This amount is \$4 billion above what the limitation was last year.

Changes in Mandatory Programs in Appropriations Bills (Section 213)

S. Con. Res. 70 continues a 60-vote point of order against appropriations bills making changes in mandatory programs. The point of order can be raised once against several provisions of an appropriations bill, and if successful the challenged provisions will be struck from the bill. However, the point of order exempts any changes in mandatory spending in appropriations legislation that have been enacted in each of the last three fiscal years, effectively grandfathering in most of the mandatory changes that are habitually used.

Debt Disclosure (Section 223)

S. Con. Res. 70 creates a new requirement that a budget resolution contain a specified debt disclosure section in order for its consideration to be in order in the Senate. The disclosure includes the effect of the resolution on the gross federal debt and the social security surplus.

Continuation of Existing Points of Order

S. Con. Res. 70 is silent on the following points of order, neither adjusting nor repealing them as enacted under last year's budget resolution, S. Con. Res. 21. As a result, the following points of order would remain in place and may not be amendable during floor debate:

Pay-as-you-go (PAYGO)

S. Con. Res. 70 would not change the current PAYGO rule. The current rule is a 60-vote point of order against legislation that would worsen the deficit relative to the Congressional Budget Office (CBO) baseline for any of the following time periods: the six-year period from FYs 2008-2013, or eleven-year period from FYs 2008-2018.

The key difference between current PAYGO and the former (2006) PAYGO is that the 2006 PAYGO allowed for deficits up to the amount assumed in the budget resolution. The current PAYGO does not allow for any deficit beyond the CBO baseline.

The practical effect of this change is that Congress cannot protect the extension of tax relief from PAYGO in the budget resolution.

Emergency Designation

S. Con. Res. 70 would not change the current 60-vote point of order against emergency designations. The current rule exempts all emergency spending from PAYGO and limitations set in the budget resolution. Emergency requirements, as designated by Congress, must meet the following five standards: necessary, sudden, urgent, unforeseen, and not permanent.

Limitation of Reconciliation Legislation

S. Con. Res. 70 would not change the current 60-vote point of order against reconciliation instructions that would increase the deficit or reduce a surplus. Had such a rule been in existence in 2001 or 2003, the Senate might not have been able to pass the President's 2001 and 2003 tax cuts using reconciliation.

Extension of Existing Points of Order

S. Con. Res. 70 would not change the expiration date (September 30, 2017) for the 60-vote waiver threshold for two existing points of order: 1) the unfunded mandates point of order and 2) the spending, revenue, or debt legislation without a budget resolution point of order. The unfunded mandates point of order prohibits consideration of any committee-reported legislation, except reconciliation bills, unless the CBO federal mandates estimate has been printed in the committee report or the Congressional Record and the estimate contains an intergovernmental mandate in excess of the statutory limit (\$50 million per year as adjusted for inflation; \$66 million for FY 2007) for the first fiscal year or any of the following four fiscal years. The spending, revenue, or debt legislation rule prohibits consideration of any spending, revenue, or debt legislation until the budget resolution for the upcoming fiscal year has been agreed to.

No Reconciliation Instructions

S. Con. Res. 70 does not contain any reconciliation instructions.

However, the House budget resolution does contain reconciliation instructions. Because the House resolution contains instructions, reconciliation will be an allowable conference item. Last year, the Senate budget resolution did not contain reconciliation instructions, but because the House resolution contained an instruction for \$750 million, reconciliation was ultimately adopted in the conference report.

Resolution Provisions

Total Non-Emergency Spending (in Billions):

Function	Title	FY08 Enacted	FY09 President's Request	FY09 Democrat Budget
050	National Defense	591	612	612
150	International Affairs	33	38	34
250	General Science, Space, and Technology	27	30	30
270	Energy	4	3	7
300	Natural Resources and Environment	33	36	40
350	Agriculture	22	21	21
370	Commerce and Housing Credit	13	10	11
400	Transportation	80	70	75
450	Community and Regional Development	20	11	15
500	Education, Training, Employment, and Social Services	90	88	94
550	Health	285	303	309
570	Medicare	390	411	420
600	Income Security	390	413	412
650	Social Security	620	653	654
700	Veterans Benefits and Services	86	90	93
750	Administration of Justice	46	46	47
800	General Government	56	24	24
900	Net Interest	234	217	218
920	Allowances	0	-15	-1
950	Undistributed Offsetting Receipts	-99	-81	-81
Total		2,920	2,998	3,037

Discretionary Spending

The budget provides a binding 302(a) budget authority and outlay allocation to the Appropriations Committee.¹ The 302(a) number is the top level for discretionary spending in a given year. As passed by the Budget Committee, S. Con. Res. 70 provides a 302(a) allocation of \$1.085 trillion in budget authority after cap adjustments. This figure is the only binding number that is forwarded to the Appropriations Committee.

The budget provides \$70 billion in funding for the wars in Iraq and Afghanistan. This is the same amount that the President requested.

¹ The Appropriations Committee subsequently breaks the 302(a) number into twelve 302(b) allocations, which are the allocations to the individual Appropriations Subcommittees.

Mandatory Spending

S. Con. Res. 70 includes \$420 billion for Medicare in FY 2009, an increase of \$30 billion (+7.7 percent) over FY 2008. The average annual increase in Medicare spending during the five-year budget window is 7.3 percent. S. Con. Res. 70 also includes \$1.3 billion in savings to Medicare in FY 2013.

The budget also includes \$20 billion in mandatory spending for stimulus initiatives in 2008 and 2009.

For both discretionary and mandatory spending, it is common to increase spending in one function area, offset by a decrease in function 920. Function 920 does not contain traditional programs, and any decreases in the function result in an across-the-board cut or other unspecified cuts to all the functions.

Revenues

The budget assumes \$1.2 trillion more in taxes over five years than the CBO baseline. Presumably, a significant portion of this revenue will come from allowing the 2001 and 2003 tax relief to expire.

In addition, the budget assumes \$10 billion in tax cuts in FY 2009 for an economic stimulus package.

The budget also assumes a one-year patch of the AMT, without offsetting the cost.

Reserve Funds

In general, a reserve fund permits the Chairman of the Committee on the Budget to increase the section 302(a) allocation and other appropriate levels set out in this resolution once certain conditions have been met. The authority to make these adjustments is solely within the discretion of the Chairman and may be made when the committee of jurisdiction reports a measure that satisfies all of the conditions set out in the reserve fund.

Generally, these funds allow for increased spending as long as the spending is offset with tax increases or spending cuts elsewhere. As reported out of committee, S. Con. Res. 70 includes 37 deficit-neutral reserve funds compared to 25 reserve funds (as reported out of committee) last year.

If all reserve funds were triggered, total spending would increase by \$300 billion, financed by tax increases.

Reserve Fund for tax relief (Section 301a)

Section 301a provides a deficit-neutral reserve fund for legislation that would provide tax relief, including extensions of expiring tax relief and refundable tax relief. Because the reserve fund is deficit neutral, the tax relief provided would have to be offset with other tax increases.

Reserve Fund for manufacturing (Section 301b)

Section 301b provides a deficit-neutral reserve fund for legislation that would revitalize the United States' domestic manufacturing sector by increasing federal research and development, expanding the scope and effectiveness of manufacturing programs across the federal government, increasing support for the development of alternative fuels, and establishing tax incentives to encourage the continued production in the United States of advanced technologies and the infrastructure to support such technologies.

Reserve Fund for housing assistance (Section 301c)

Section 301c provides a deficit-neutral reserve fund for legislation that would provide housing assistance or establish an affordable housing fund.

Reserve Fund for flood insurance reform (Section 301d)

Section 301d provides a deficit-neutral reserve fund for legislation that would provide for flood insurance reform and modernization.

Reserve Fund for trade (Section 301e)

Section 301e provides a deficit-neutral reserve fund for legislation relating to trade agreements, preferences, sanctions, enforcement, or customs.

Reserve Fund for TANF assistance (Section 301f1)

Section 301f1 provides a deficit-neutral reserve fund for legislation reauthorizing Temporary Assistance for Needy Families (TANF) supplemental grants.

Reserve Fund for child care (Section 301f2)

Section 301f2 provides a deficit-neutral reserve fund for legislation that would provide up to \$5 billion for the child care entitlement to states.

Reserve Fund for unemployment compensation (Section 301f3)

Section 301f3 provides a deficit-neutral reserve fund for legislation that improves the unemployment compensation program.

Reserve Fund for Trade Adjustment Assistance (Section 301f4)

Section 301f4 provides a deficit-neutral reserve fund for legislation that reauthorizes the Trade Adjustment Assistance (TAA) programs.

Reserve Fund for the Farm Bill (Section 301g1)

Section 301g1 provides a deficit-neutral reserve fund for legislation that reauthorizes the programs of the Food Security and Rural Investment Act of 2002 at an amount up to \$15 billion.

Reserve Fund for County Payments (Section 301g2)

Section 301g2 provides a deficit-neutral reserve fund for legislation that reauthorizes the Secure Rural Schools and Community Self-Determination Act of 2000.

Reserve Fund for higher education (Section 302)

Section 302 provides a deficit-neutral reserve fund for legislation that would make higher education more accessible and more affordable.

Reserve Fund for infrastructure (Section 303)

Section 303 provides a deficit-neutral reserve fund for legislation providing for investment in America's infrastructure, including projects for: transit, public housing, energy, water, highway, bridge, or other infrastructure projects.

Reserve Fund for energy legislation (Section 304a)

Section 304a provides a deficit-neutral reserve fund for legislation that would decrease greenhouse gas emissions, reduce the nation's dependence on foreign sources of energy, produce green jobs, or preserve the national parks. The legislation may include the extension of energy tax incentives.

Reserve Fund for settlements (Section 304b)

Section 304b provides a deficit-neutral reserve fund for legislation that would fulfill the purposes of the San Joaquin River Restoration Settlement Act or the Navajo Nation water rights settlement and other provisions authorized by the Northwest New Mexico Rural Water Projects Act.

Reserve Fund for wounded service members (Section 305a)

Section 305a provides a deficit-neutral reserve fund for legislation that improves the medical care of and disability benefits for wounded or disabled military personnel.

Reserve Fund for a Post 9/11 G.I. Bill (Section 305b)

Section 305b provides a deficit-neutral reserve fund for legislation that would enhance educational benefits for those who joined the Armed Forces on or after September 11, 2001.

Reserve Fund for SCHIP (Section 306a)

Section 306a provides a deficit-neutral reserve fund for legislation to reauthorize the State Children's Health Insurance Program (SCHIP), at an amount up to \$50 billion. The legislation must maintain coverage for those currently enrolled in SCHIP, continue efforts to reach uninsured children who are currently eligible for SCHIP or Medicaid but not enrolled, and support states in their efforts to cover more children.

Reserve Fund for Medicare Physicians Payments (Section 306b1)

Section 306b1 provides for a deficit-neutral reserve fund for legislation that increases the reimbursement rate for physician services under Section 1848(d) of the Social Security Act. Funds under that section may also be used for financial incentives for physicians to improve care through "consensus-based quality measures."

Reserve Fund for Medicare (Section 306b2)

Section 306b2 provides for a deficit-neutral reserve fund for legislation, in an amount up to \$10 billion, that makes improvements to Medicare including: improvements to the prescription drug benefit under Medicare Part D, adjustments to the Medicare Savings Program, and reductions in beneficiary cost-sharing for preventive benefits under Medicare Part B, or measures to encourage physicians to train in primary care residencies and attract more physicians and other health care providers to states that face a shortage of health care providers.

Reserve Fund for comparative effectiveness (Section 306c1)

Section 306c1 provides a deficit-neutral reserve fund for legislation that establishes a new federal or public-private initiative for comparative effectiveness research.

Reserve Fund for improving the health care system (Section 306c2)

Section 306c2 provides a deficit-neutral reserve fund for legislation that creates a framework for the use of Medicare data for the purpose of conducting research to evaluate health care safety. The legislation must also include provisions to protect privacy.

Reserve Fund for health information technology (Section 306c3A)

Section 306c3A provides a deficit-neutral reserve fund for legislation that provides incentives for adoption of modern information technology to improve quality and protect privacy in health care.

Reserve Fund for adherence to best practices (Section 306c3B)

Section 306c3B provides a deficit-neutral reserve fund for legislation that provides incentives for Medicare providers to comply with clinical protocols identified as best practices.

Reserve Fund for Food and Drug Administration (FDA) (Section 306d1)

Section 306d1 provides a deficit-neutral reserve fund for legislation that authorizes the FDA to regulate products and assess user fees on manufacturers and importers to cover the cost of the FDA regulatory activities.

Reserve Fund for prescription drug importation (Section 306d2)

Section 306d2 provides a deficit-neutral reserve fund for legislation that would permit the safe importation of prescription drugs approved by the FDA from a specified list of countries.

Reserve Fund for Medicaid rules or administrative actions (Section 306e1)

Section 306e1 provides a deficit-neutral reserve fund for legislation that includes provisions regarding the final rule published on May 29, 2007 (72 Fed. Reg. 29748) related to Medicaid payments and financing that would, among other things, limit payments to government providers for their cost of providing Medicaid services. The reserve fund also applies to any other rule or administrative action that would affect the Medicaid program or SCHIP in a similar manner, or place restrictions on coverage of or payment for graduate medical education, or several other services. This reserve fund would also apply to the administrative guidance issued by the Centers for Medicare and Medicaid Services (CMS) in the August 17, 2007 letter from Dennis Smith, Director of the Center for Medicaid and State Operations, which restricted funds to expand SCHIP unless states had first taken steps to cover lower-income children.

Reserve Fund for Transitional Medical Assistance (Section 306e2)

Section 306e2 provides a deficit-neutral reserve fund for legislation that extends the Transitional Medical Assistance program.

Reserve Fund for small business health insurance (Section 306f1)

Section 306f1 provides a deficit-neutral reserve fund for legislation that makes health insurance coverage more affordable to small businesses.

Reserve Fund for health care reform (Section 306f2)

Section 306f2 provides a deficit-neutral reserve fund for legislation that improves health care and provides quality health insurance for the uninsured and underinsured.

Reserve Fund for diabetes programs (Section 306f3)

Section 306f3 provides a deficit-neutral reserve fund for legislation that reauthorizes the special diabetes program for Indians and the special diabetes programs for Type 1 diabetes.

Reserve Fund for long-term care (Section 306f4)

Section 306f4 provides a deficit-neutral reserve fund for legislation that would improve long-term care, enhance the safety and dignity of patients, encourage appropriate use of institutional and non-institutional care, promote quality care, and provide for the cost-effective use of public resources.

Reserve Fund for mental health parity (Section 306f5)

Section 306f5 provides a deficit-neutral reserve fund for legislation that provides parity between insurance coverage for mental health benefits and benefits for medical and surgical services.

Reserve Fund for pediatric dental care (Section 306g)

Section 306g provides a deficit-neutral reserve fund for legislation that provides improved access to pediatric dental care for children from low-income families

Reserve Fund for judicial pay and judgeships (Section 307)

Section 307 provides a deficit-neutral reserve fund for legislation that would authorize salary adjustments for justices and judges of the United States or increase the number of federal judgeships.

Background

As Congress's blueprint for federal spending, the budget resolution sets binding limits on discretionary and mandatory spending levels and binding floors for revenue collections. For discretionary spending, the budget resolution allocates overall spending levels to the House and Senate Appropriations Committees through its 302(a) allocations.

The budget resolution's provisions are enforced through internal Senate rules and the Budget Act. The spending and revenue levels adopted in the resolution are enforced through 60-vote points of order.

The budget resolution may direct authorizing committees to make changes in mandatory spending programs or tax policy through reconciliation instructions. In past resolutions, spending reduction instructions have been directed to the Finance, Agriculture, Commerce, Banking, HELP, and other authorizing committees. Revenue-change instructions have been directed to the Finance Committee.

This budget does not include any reconciliation instructions.

Procedures

Under the Budget Act of 1974, as amended, a budget resolution is a privileged piece of legislation. It is not subject to filibuster, and debate time is limited to 50 hours, equally divided. There are sub-limits within the overall time limitation, such as a two-hour cap on any first-degree amendment and a one-hour limit on any second-degree amendment, debatable motion, or appeal. Time can be yielded from the overall allocation. If time is yielded back, then both sides share equally in the time that remains.² Votes do not count against this time limit, nor do quorum calls just prior to votes. [For an explanation of Budget Act points of order, see *Riddick's Senate Procedure*, revised in 1992, pp. 615-618.]

² For more information, see Martin Gold, "Senate Procedure and Practice," Rowman & Littlefield Publishers, Inc. Lanham, Maryland, 2004.

Amendments to the budget resolution must be germane; otherwise, a point of order lies against the amendment, and 60 votes are required to waive the point of order. Germane amendments are those which:

- 1) Strike;
- 2) Increase or decrease numbers; or
- 3) Add language that restricts some power in the resolution.

Debate on first-degree amendments is limited to two hours, one hour to proponents and one hour to opponents. Debate on second-degree amendments is limited to one hour, 30 minutes to proponents and 30 minutes to opponents. All debate time on a first-degree amendment must be used or yielded back before a second-degree amendment can be offered.

Debate on any motion to waive a point of order is limited to one hour, equally divided. Amendments can be offered at any time.

Once all debate time has been used or yielded back, Senators may continue to offer further amendments. No debate is in order, but roll call votes can be taken. Dozens of votes may occur with little or no explanation; this is frequently referred to as “vote-a-rama.” Once all amendments have been dispensed with, a vote for final passage occurs.

Possible Amendments

During the committee markup, 17 amendments were dispensed with. Of these amendments, ten were accepted by voice vote. The remaining 7 amendments were dispensed with by a roll call vote. One amendment was accepted, with the remaining six defeated. Both the accepted and defeated amendments are listed. Similar amendments can be expected on the Senate floor. (Cosponsors in parentheses.)

Amendments Accepted by Voice Vote:

Stabenow, D-MI (Whitehouse, Lautenberg, Enzi): Amendment to create a deficit-neutral reserve fund for legislation for health information technology (IT) and best practices legislation.

Menendez, D-NJ (Lautenberg, Stabenow and Feingold): Amendment to increase budget authority and outlays for the Byrne/Justice Assistance Grant (JAG) program and decrease function 920.

Feingold, D-WI: Amendment to adjust the discretionary caps to reduce waste in defense contracting.

Cardin, D-MD: Amendment to create a deficit-neutral reserve fund for pediatric dental care.

Allard, R-CO: Amendment to add provisions requiring debt disclosure.

Whitehouse, D-RI: Amendment to create a deficit-neutral reserve fund for energy and the environment with the intent of protecting oceans and coastal areas.

Stabenow, D-MI: Amendment to create a deficit-neutral reserve fund for veterans and service members to prohibit increased fees on veterans.

Feingold, D-WI (Menendez): Amendment to clarify that the deficit-neutral reserve fund for education would increase funding for the Pell Grant program.

Feingold, D-WI: Amendment to clarify that the deficit-neutral housing reserve in the Chairman's Mark would provide low-income rental assistance.

Gregg, R-NH: Amendment to alter the long-term deficit point of order to prohibit legislation that would increase the deficit in certain years.

Amendment Accepted by Roll Call Vote

Allard, R-CO: Amendment to reduce budget authority and outlays in function 350 and increase function 600. **Amendment Accepted 13–10.**

Amendments Defeated

Crapo, R-ID: Amendment to create a special scoring rule that requires the Joint Committee on Taxation to report the amount of revenue raised from closing the tax gap and excludes such revenue from the pay-as-you-go scorecard. **Amendment Rejected 11–11.**

Grassley, R-IA: Amendment to exempt indexing the AMT for inflation from the PAYGO rule. **Amendment Rejected 10–12.**

Cornyn, R-TX: Amendment to strike the super-majority waiver requirement from the Senate's PAYGO rule. **Amendment Rejected 11–12.**

Sessions, R-AL: Amendment to exempt legislation extending the 2001 and 2003 tax cuts from the PAYGO rule. **Amendment Rejected 11–12.**

Gregg, R-NH: Amendment to reduce budget authority and outlays in function 350. **Amendment Rejected 8–14.**

Gregg, R-NH: Amendment to add a point of order against spending more than 20 percent of the total amount saved from reconciliation legislation. **Amendment Rejected 10–12.**